likewise, is the implied promise to restore upon which the purchaser of land is allowed, upon non-conveyance by the vendor, to recover the price paid, in quasi-contract. *Thomas* v. *Pacific Beach Co.*, 115 Cal. 136, 46 Pac. 899. *Duncan* v. *Gibson*, 17 Utah 209, 53 Pac. 1044. The decisions would seem to draw the line between such implied contracts as those just cited, on the one hand, and all implied warranties, as in the principal case, on the other. *Bancroft* v. *San Francisco Tool Co.*, 47 Pac. 684 (Cal.); *Meade* v. *Warring*, 35 S. W. 308 (Tex. Civ. App.). Such a distinction is hardly satisfactory. The cases of implied warranties, despite the broad language of the opinions, usually involve warranties of goods ordered by description only. The principal case is of this type. Here it may well be argued that a fair interpretation of the language shows that the parties in fact contemplated goods of a fair quality of the description specified, and not any goods of that description. See WILLISTON, SALES, § 230. But when the sale is of a specific chattel, the implied warranty cannot be derived from the terms of the bargain. It is imposed upon the vendor regardless of the intent of the parties by operation of law, and should be subject to any statutory limitations upon unwritten or implied contracts.

SALES — STOPPAGE *IN TRANSITU* — SELLER'S LIABILITY FOR FREIGHT. — A vendor sold goods on credit. The purchaser contracted with a shipowner to pay for their transportation. On learning of the purchaser's insolvency, the vendor stopped the goods *in transitu*, but did not take possession of them. The carrier sues the vendor for the freight. *Held*, that he may recover. *Booth Steamship Co.* v. *Cargo Fleet Iron Co.*, [1916] 2 K. B. 570 (Ct. of App.).

In most cases of stoppage *in transitu* the carrier is amply protected by his lien on the goods. The novel point presented by the principal case can, therefore, only arise when the goods at the point of stoppage are not worth enough to pay the freight. Stoppage *in transitu*, being a right of purely equitable nature, is not allowed where it would be unfair to the carrier. See WILLISTON, SALES, § 541. In view of this principle, if the right to stop is clearly given the seller, an exercise of the right should obligate him to indemnify the carrier for any loss caused thereby. But the loss occasioned in a case like the principal case would be only the amount which the carrier could recover from the insolvent buyer. Hence this quasi-contractual remedy would not give the carrier the full price of the freight. But the principal case finds full support on another theory. Formerly a stoppage *in transitu* was effective only if the seller secured actual possession of the goods. See *Snee* v. *Prescott*, 1 Atk. 245, 248. The present method, by mere notice, is really a short cut to the same result, for the stoppage gives the seller only a lien, which depends for its effectiveness on his possession. See *Newhall* v. *Vargas*, 15 Me. 314. It is not unreasonable, therefore, to imply from the seller's notice to stop a promise by him to take possession of the goods. But in order to obtain possession, the seller must discharge the carrier's lien for freight. *Potts* v. *New York & New England R. Co.*, 131 Mass. 455; *Pennsylvania Steel Co.* v. *Georgia R., etc. Co.*, 94 Ga. 636, 21 S. E. 577. It would therefore follow that a promise to discharge the lien is likewise implied in the order.

TRUSTS — CREATION AND VALIDITY — CONDITION CONTRARY TO PUBLIC POLICY. — A settlor placed certain funds in trust for the plaintiff until he should come of age. The interest on this sum was to be paid for the plaintiff's maintenance. But no interest was to be paid unless the father, in whose custody he then was, should give up all control over him. Plaintiff seeks to have interest paid him while still in his father's control. *Held*, that the condition is enforceable. *Re Borwick's Settlement*, 115 L. T. R. 183 (Ch. D.).

As in the case of contracts, conditions in gifts and testamentary dispositions making the effectiveness of the gift dependent on the doing of an act contrary to

public policy by the beneficiary have been held void. *Morley* v. *Renoldson*, 2 Hare 570; *In re Morgan*, 26 T. L. R. 398; *Matter of Anonymous*, 80 N. Y. Misc. 10, 141 N. Y. Supp. 700. The ground taken by the court in the principal case is that though the condition might be void if it were to be performed by the beneficiary, as it is to be performed by a third party, the father, and requires no illegal act by the beneficiary, it is binding. But whether a condition is void or not must depend on whether it has a sufficiently strong tendency to cause an act contrary to public policy. *Daboll* v. *Moon*, 88 Conn. 387, 91 Atl. 646; *Matter of Seaman*, 218 N. Y. 77. On principle it would seem immaterial whether the act is to be done by the beneficiary or a third person. *In re Sandbrook*, [1912] 2 Ch. 471. The more difficult question arises: is the act of giving up all control over a son against public policy? An earlier English case has so held. *In re Sandbrook, supra.* And contracts to give up such control have been held voidable and not binding on the parent. *Queen* v. *Barnardo*, 23 Q. B. D. 305; *Swift* v. *Swift*, 12 L. T. R. 435, 34 Beav. 266; *Matter of Scarritt*, 76 Mo. 565. But it would seem as if the public policy involved must rest on the facts of each case — in some instances the separation of father and son must be distinctly beneficial.

UNINCORPORATED SOCIETIES — TRADE UNIONS — SHERMAN ANTI-TRUST LAW. — An action for treble damages under the Sherman Anti-trust Law was brought by the receiver of nine coal mining companies against an unincorporated labor union in the name of the union. *Held*, that the action lies. *Dowd* v. *United Mine Workers of America*, 235 Fed. 1.

For a discussion of this case, see NOTES, p. 263.

WATER LAW — EASEMENTS ON RUNNING WATER — EFFECT OF A CONTRACT INDEFINITE AS TO TIME. — In return for an easement for its pipes in the railroad company's right of way a water company bound itself to supply water from a station hydrant free of charge for an indefinite period. The water company later refused to supply this water. The railroad sues to have its rights declared. *Held*, that the contract created a servitude upon the pipe line and water system. *Southern Pacific Co.* v. *Spring Valley Water Co.*, 159 Pac. 865 (Cal.)

It was the general theory of the common law that running water in its natural state was incapable of classification as property. 2 BLACK. COMM. 18. So, when diverted into an artificial container, and subjected to property classification, water would seem to fall under the head of personalty. *People ex rel. Heyneman* v. *Blake*, 19 Cal. 579; *Bear Lake Co.* v. *Ogden*, 8 Utah 494; *Hagerman, etc. Co.* v. *McMurray*, 113 Pac. 823 (N. M.); *Chockalingani Pillai*, 2 Mad. W. N. 219 (India). See 1 WIEL, WATER RIGHTS IN THE WESTERN STATES, 3 ed., § 35. But the irrigation laws of certain of the western states grew up from a customary usage between irrigators and distributing companies, according to which it was conceived that the irrigator was the real appropriator from the natural stream at the head of the system, and that he had an estate, servitude, or easement in the water system itself. *Wheeler* v. *Northern Colorado Irrigation Co.*, 10 Colo. 582, 17 Pac. 317. The adoption of this rule, known as the Colorado rule, necessarily rejected the common law position. So, in the case which adopted the Colorado rule in California, the *dictum* that water in a pipe is personalty was observed and denied. *Stanislaus Water Co.* v. *Bachman*, 152 Cal. 716, 726, 93 Pac. 858, 862. A later case declared that the Colorado rule was unconstitutional under the California constitution. *Leavitt* v. *Lassen Irrigation Co.*, 157 Cal. 82, 106 Pac. 404. See *San Joaquin, etc. Irrigation Co.* v. *Stanislaus Co.*, 34 Sup. Ct. Rep. 652. But the position on the nature of running water which had been adopted to support the Colorado rule was upheld even when the reason for it was gone. *Copeland* v. *Fairview etc. Co.*, 165